

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Licensing Order  
Issued to Randy J. Golombecki,  
Individually and d/b/a Randy Golombecki  
Construction

**ORDER GRANTING  
MOTION TO COMPEL**

This matter is pending before Administrative Law Judge Jeanne M. Cochran on a Motion to Compel Discovery filed by the Department of Labor and Industry (Department) on October 30, 2013. Pursuant to Minn. R. 1400.6600, Randy J. Golombecki (Respondent) was given ten working days (plus three days for mailing) from the date on which the Motion was received to file a reply. Respondent did not file a reply. As a result, the matter was taken under advisement on November 18, 2013.

Christopher M. Kaisershot, Assistant Attorney General, represents the Department. Thomas Pearson, Gammello, Qually, Peason & Mallek, represents the Respondent, Randy J. Golombecki, individually and d/b/a Randy Golombecki Construction.

Based on all of the files and proceedings herein, and for the reasons contained in the Memorandum attached hereto, the Administrative Law Judge makes the following:

**ORDER**

1. The Department's Motion to Compel Discovery is hereby by **GRANTED**.
2. The Respondent shall respond to the Department's Requests for Admissions, Interrogatories, and Requests for Production of Documents **by 4:30 p.m. on December 10, 2013**. To the extent that a particular discovery request seeks information that is subject to the attorney-client privilege or other privilege recognized by law, the Respondent may state an objection to the request on that basis.

3. Failure to respond to the Department's discovery requests **by 4:30 p.m. on December 10, 2013** may result in a further order as provided in Minn. R. 1400.6700, subp. 3.

Dated: November 26, 2013

s/Jeanne M. Cochran  
\_\_\_\_\_  
JEANNE M. COCHRAN  
Administrative Law Judge

## MEMORANDUM

### Factual Background

On June 24, 2013, the Department issued a Notice and Order for Prehearing Conference in the above-captioned matter. The Notice and Order for Prehearing Conference alleges that the Respondent failed to correct violations of the State Building Code in violation of Minn. Stat. §§ 326B.082 and 326B.084, and that the Respondent failed to comply with a request for information from the Commissioner of the Department within the time specified in violation of Minn. Stat. §§ 326B.082 and 326B.84.<sup>1</sup> The specific allegations are set forth in the Licensing Order with Penalty (Licensing Order) issued by the Department on April 11, 2013.<sup>2</sup>

On September 6, 2013, the Department served Requests for Admissions, Interrogatories, and Requests for Production of Documents (collectively, Discovery Requests) on counsel for Respondent.<sup>3</sup> Under the applicable rules of the discovery, the responses to the Requests for Admissions were due within 10 days, and the responses to the Interrogatories and Requests for Production of Documents were due within 30 days.<sup>4</sup>

On October 17, 2013, counsel for the Department faxed a letter to counsel for the Respondent because the Respondent had not provided any response to the Discovery Requests as of that date.<sup>5</sup> Counsel for the Department requested that the Respondent “immediately provide responses to the Department’s discovery requests” and also stated that he was willing to discuss how to resolve any discovery disputes.<sup>6</sup> As of October 28, 2013, counsel for the Respondent still had not provided any responses to

---

<sup>1</sup> Notice and Order for Prehearing Conference at 3.

<sup>2</sup> Licensing Order with Penalty (attached to Notice and Order for Prehearing Conference).

<sup>3</sup> Motion to Compel, Exhibit (Ex.) 1.

<sup>4</sup> Minn. R. 1400.6800; Minn. R. 1400.6700, subp. 2.

<sup>5</sup> Motion to Compel, Ex. 2.

<sup>6</sup> *Id.*, Ex. 2.

the Department's Discovery Requests. Nor had counsel for the Respondent communicated with counsel for the Department regarding the Discovery Requests.<sup>7</sup>

### **Discovery Pursuant to Minn. R. 1400.6700, Subp. 2 and Minn. R. 1400.6800**

Minnesota Rules part 1400.6700, subpart 2, specifies that any means of discovery available under the Rules of Civil Procedure for the District Court of Minnesota is allowed and authorized. Minnesota Rules part 1400.6700, subpart 3, permits the filing of a Motion to Compel Discovery.<sup>8</sup> The party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant the discovery.<sup>9</sup>

In addition, Minn. R. 1400.6800 specifically provides that a party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto.

### **The Department's Discovery Requests Are Warranted**

The Department's Requests for Admissions ask the Respondent to admit the factual allegations in the Licensing Order that is the subject of this contested case proceeding. The Department's Interrogatories seek to have the Respondent identify: the facts and information that support the Respondent's position that he did not commit the alleged violations; persons with knowledge or information concerning the facts and allegations in the Licensing Order; any admissions against interest that the Respondent claims the Department made; and other relevant information. The Department's Requests for Production of Documents seeks:

- all "statements" related to this matter;
- all documents used or consulted in answering the Interrogatories;
- all documents that may be used in discovery or at hearing to impeach a witness;
- all documents that may be used to refresh the recollection of a witness;
- all documents exchanged between the Respondent and any expert witness relating to this case;
- all documents exchanged between the Respondent and the home owner referenced in the Licensing Order;
- all photographs and audio or visual recordings of the property at issue in the Licensing Order;

---

<sup>7</sup> *Id.* at 1.

<sup>8</sup> Minn. R. 1400.6700, subp. 2.

<sup>9</sup> *Id.*

- all documents exchanged between the Respondent and any person “concerning this administrative action”;
- all expert reports, including drafts, that the Respondent obtained in anticipation of any hearing in this administrative proceeding; and
- all documents exchanged between the Respondent and the Department concerning this matter.<sup>10</sup>

The information sought by the Department is relevant to the issues set forth in the Notice and Order for Prehearing Conference and the Licensing Order. In addition, the discovery requested is needed for the proper presentation of the Department’s case, as well as to rebut any affirmative defenses that may be asserted by the Respondent. There was no evidence presented that the Discovery Requests were served for the purposes of delay. Moreover, the Respondent failed to file any objection to the Department’s Discovery Requests or to Department’s Motion to Compel. This matter involves potentially serious sanctions, including the suspension of the Respondent’s license, and imposition of a penalty of \$11,500. Consequently, the issues and amounts in controversy are significant enough to warrant discovery.

The Department however, is not entitled to discover privileged information.<sup>11</sup> At least one of the Department’s Requests for Production of Documents – the request for “All Documents ... exchanged between [Respondent] and any Person concerning this administrative action” – appears to encompass documents that may be covered by the attorney-client privilege. To the extent that a particular discovery request seeks privileged information, the Respondent has the right to object on those grounds.<sup>12</sup>

## Conclusion

The Respondent has had over 70 days to respond to the Department’s Discovery Requests. As a result, the Department’s Motion to Compel is hereby **GRANTED**. The Respondent shall have until **4:30 p.m. on December 10, 2013**, to serve upon the Department full and complete responses to the Department’s Discovery Requests, subject to any applicable objections on the basis of privilege.

**J. M. C.**

---

<sup>10</sup> Motion to Compel, Ex. 1.

<sup>11</sup> Minn. R. 1400.6700, subd. 2; Minn. R. Civ. P. 26.02(a).

<sup>12</sup> See *Id.*